

REMARKS/ARGUMENTS

Favorable reconsideration of this application, in light of the present amendments and following discussion, is respectfully requested.

Claims 1-21 are pending; Claims 1-3, 8, and 10 are amended; Claims 18-21 are newly added; and no claims are canceled herewith. As support for the present amendment may be found, at least for example, in the specification at page 7, it is respectfully submitted that no new matter is added by this amendment.

In the outstanding Office Action, Claim 2 was rejected under 35 U.S.C. § 101; Claims 1, 2, 8, and 9 were rejected under 35 U.S.C. § 102(b) as anticipated by Viltro et al. (U.S. Pat. No. 5,837,005, hereafter Viltro); Claims 3, 4, 10, and 11 were rejected under 35 U.S.C. § 102(b) as anticipated by Zeoli-Jones (U.S. Pat. No. 5,840,418); Claims 5-7 and 12-14 were rejected under 35 U.S.C. § 103(a) as unpatentable over Zeoli-Jones; Claim 15 was rejected under 35 U.S.C. § 103(a) as unpatentable over Viltro in view of Ono et al. (U.S. Pat. No. 6,629,964, hereafter Ono); and Claims 16 and 17 were rejected under 35 U.S.C. § 103(a) as unpatentable over Viltro.

Applicants thank Examiner Comstock and Primary Examiner Robert for the interview granted Applicants' representative on August 3, 2004. During the interview, Claims 1-18 were discussed with regard to the references of record. While no agreement was reached, prosecution of the application was furthered by the discussion during the interview.

With regard to the outstanding rejection of Claim 2 under 35 U.S.C. § 101, it is respectfully submitted that this rejection is overcome by the present amendment. Specifically, Claim 2 has been amended to recite "wrappable," as discussed during the interview. Accordingly, it is respectfully requested that this rejection be withdrawn.

With regard to the rejection of Claims 1, 2, 8, and 9 under 35 U.S.C. § 102(b) as anticipated by Viltro, that rejection is respectfully traversed. Independent Claims 1 and 8

have been amended to recite, in part, a base sheet adapted to contact hair when in the wrapping state and that the base sheet comprises a water resistant material. As described in the specification, because the sheet comes into contact with hair that is wetted with water or a hair treatment preparation, water resistant or water repellant materials are preferred.¹

Viltro describes that a cell forming layer 20 is made of any number of suitable materials including, but not limited to, films of polyethylene, polypropylene, polyester, styrene block copolymers, film coating nonwovens, laminates, and coextrusions. However, as is evident from the figures of Viltro, cell forming layer 20 does not serve as a base layer in the manner similar to that recited in independent Claims 1 and 8. Specifically, layer 20, which forms the cell 16, does not come into contact with hair. In fact, if layer 20 were exposed, the adhesive layers 28 and 32, for example, may come into contact with hair as well. This would be undesirable, as the hair would become tangled in the adhesive and would cause much pain to the user.

More specifically, Viltro describes that on the second side 14 of the thermal pad 10 is a second outer fabric 30, which is attached to cell forming layer 20 by a second adhesive layer 32.² Thus, if the tacky surface of the adhesive 32 were exposed to hair (which would be necessary if layer 20 were exposed to hair) the hair would be damaged, and Viltro would be rendered unsuitable for its intended purpose.

Thus, as Viltro fails to disclose or suggest the base layer recited in independent Claims 1 and 8, it is respectfully submitted that Claims 1, 2, 8, and 9 patentably distinguish over Viltro. It is therefore respectfully requested that this rejection be withdrawn.

Regarding the rejection of Claims 3, 4, 10, and 11 under 35 U.S.C. § 102(b) as anticipated by Zeoli-Jones, this rejection is also respectfully traversed.

¹ Specification, page 7, lines 3-7.

² Viltro, col. 4, lines 9-11.

As discussed during the interview, Zeoli-Jones is not believed to disclose or suggest a base sheet adapted as recited in Claims 3 and 10, from which Claims 4 and 11 depend.

Thus, as Zeoli-Jones fails to disclose or suggest the limitations of Claims 3, 4, 10, and 11, it is respectfully requested that this rejection be withdrawn.

With regard to the rejection of Claims 5-7 and 12-14 under 35 U.S.C. § 103(a) as unpatentable over Zeoli-Jones, this rejection is also respectfully traversed.

As explained above, Zeoli-Jones fails to disclose or suggest the base sheet recited in independent Claims 3 and 10, from which Claims 5-7 and 12-14 respectively depend. Therefore, it is respectfully requested that the outstanding rejection of Claims 5-7 and 12-14 be withdrawn.

Regarding the rejection of Claim 15 under 35 U.S.C. § 103(a) as unpatentable over Viltro in view of Ono, that rejection is respectfully traversed.

As noted above, Viltro fails to disclose or suggest the limitations of Claim 1, from which Claim 15 depends. Further, as admitted in the outstanding Office Action, Viltro does not disclose the features of Claim 15. The Office Action attempts to remedy the admitted deficiencies of Viltro by relying upon Ono.

Ono is assigned on its face to Kao Corporation. Ono was filed as a U.S. patent application on April 2, 1999 and issued as a U.S. patent on October 7, 2003. The present application was filed on February 26, 2002. The assignment of the present application to Kao Corporation is recorded at reel 012770/frame 0968, and the present inventors were under an obligation to assign the present invention to Kao Corporation at the time of invention.

Thus, as Ono is prior art against the pending claims only under 35 U.S.C. § 102(e), and Ono is commonly assigned to Kao Corporation, it is respectfully submitted that Ono may not be applied against Claim 15 in the manner proposed by the outstanding Office Action.

As Ono may not be applied against the pending claims, it is respectfully requested that the outstanding rejection of Claim 15 be withdrawn.

Finally, with regard to the rejection of Claims 16 and 17 under 35 U.S.C. § 103(a) as unpatentable over Viltro, that rejection is also respectfully traversed. Claims 16 and 17 depend from Claim 1.

As set forth above, Viltro does not disclose or suggest the base sheet of Claim 1. Therefore, it is respectfully submitted that Claims 16 and 17 patentably distinguish over Viltro, and it is respectfully requested that this rejection be withdrawn.

Newly added Claims 18-21 recite subject matter previously disclosed in the specification at, for example, page 7. Therefore, it is respectfully submitted that no new matter is added by Claims 18-21. Moreover, Claims 18-21 are believed to patentably distinguish over the references of record, as they depend from claims which are believed to be allowable for the reasons set forth above.

Consequently, in view of the foregoing discussion and present amendments, it is respectfully submitted that this application is in condition for allowance. An early and favorable action is therefore respectfully requested.

Respectfully submitted,

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